ANALYSIS AND FINDINGS:

This issue was extensively addressed in the FCC Order, which expressly rejected AT&T's current position. However, as BellSouth has already stated its willingness to do so, in circumstances where there is an open connections or terminals in BellSouth's NID, AT&T shall be allowed to connect its loops to such open connections or terminals. However, in circumstances where there are no open connections or terminals, AT&T's request to disconnect BellSouth's loop from the NID is inappropriate. In addition to providing the connection between the local exchange carrier's loop and the customer's wiring, the National Electric Code requires that the NID be grounded and bonded via the NID. If BellSouth's loop is disconnected from the NID, it must be re-grounded in some fashion. To allow a third party to disconnect BellSouth's loop from the NID and re-ground it appears to be fraught with potential for damage to BellSouth's loop, particularly when the alternatives are considered. In circumstances where there are no open connections or terminals, AT&T be allowed to effect a NID-to-NID connection as described in the FCC Order, at ¶¶392 - 394.

14(B): AIN Capabilities (Signaling Link Transport Signaling Transfer) Points (STP) and Service Control Points (SCP) and Databases

AT&T's Position: *BellSouth refuses to unbundle access to its signaling network elements in such a way that AT&T can achieve parity in the creation and offering of Advanced Intelligent Network ("AIN") based services. BellSouth seeks to provide AT&T access to BellSouth's network via a mediation device which BellSouth claims is necessary to ensure the security and integrity of the network.*

The Commission should order BellSouth to provide unmediated access to the AIN for three reasons. First, introduction of the type of mediation that BellSouth is proposing will directly affect

Louisiana consumers by increasing post-dial delay by an estimated 20% over that of a similar AIN call made by a BellSouth customer. The increased post dial delay thus creates a difference between the service offered by BellSouth and the service that new entrants will be able to provide their customers. In order for robust competition in the local telephone exchange market to develop quickly in Louisiana, new entrants must be able to offer potential customers service that meets or exceeds comparable service provided by BellSouth. While the post dial delay increment may be small, and may even, as BellSouth has suggested, be barely perceptible to a customer, the mere existence of the difference in the quality of the service provided by AT&T and BellSouth could be exploited by BellSouth to its advantage. As demonstrated by the excerpt from the BellSouth Internet website page used in the cross examination of Mr. Varner at the hearing, BellSouth can and will take strategic advantage of any disparity, real or perceived, between its service and the service of new entrants. Such a result will disadvantage the new entrant's ability to attract customers and thereby severely inhibit the growth of competition in Louisiana.

Second, introduction of a mediation device into the signaling network will insert additional points of potential network failure, as well as increasing the cost and time of implementing services to customers. As detailed in the direct testimony of AT&T witness Mr. Hamman, existing safeguards within the signaling network already provide the necessary protection against traffic overload and unauthorized access. Further, recent industry trials and tests of AIN capabilities demonstrate that mediated access to the AIN is unnecessary.

Third, allowing BellSouth to utilize the mediation device would contravene the Louisiana Commission's own order that local exchange carriers must provide access to each other's databases, including AIN, "through signaling interconnection with functionality, quality, terms, and conditions

equal to that provided to the [local exchange carrier] and its affiliates." LPSC Reg. § 901(L)(3).

Should this Commission conclude that mediation is necessary, BellSouth must also be required to route its traffic through such mediation. The LPSC § 901(L)(3) requires that access to databases, including AIN, be "equal " to that which the LEC provides itself. Consequently, all carriers should route traffic through the mediation device. Additionally, requiring BellSouth to also route its traffic through the mediation device, encourages BellSouth to cooperate with AT&T to create a device that is less noticeable to all customers by putting all on a level playing field.

BellSouth's Position: *BellSouth has agreed to give AT&T access to BellSouth's AIN capabilities. In order to prevent both intentional and unintentional disruption of its network, BellSouth proposes that computer software referred to as "mediation" devices be put into place. BellSouth has agreed, should AT&T believe that it needs similar protection from any BellSouth's AIN database connected to AT&T's network, to allow AT&T' use of similar mediation devices.*

BellSouth believes that two types of mediation are required to protect its network from intentional or unintentional disruption. The first is mediation required between a third party's (such as AT&T's) Service Control Point ("SCP") and BellSouth's Signal Transfer Points ("STPs"). BellSouth believes it has a right to protect its network. Even with the development of new AIN functionality, a mechanism for mediation is required to prevent intentional or unintentional disruption of BellSouth's AIN network by a CLEC. In his pre-filed testimony, Mr. Hamman pointed to a joint report on testing conducted by AT&T and BellSouth on the subject of AIN interconnection. One need simply read from the first page of BellSouth's portion of that joint report to understand why such un-mediated access should not be allowed. The first page of that report includes the following two sentences:

> *Testing conducted between AT&T and BellSouth focused exclusively on the call processing aspects of the MMB service and did not address more global and complex AIN interconnection issues such as billing, operations, administration, maintenance or provisioning.... As verified during the Interconnection Test, this architectural proposal fails to address a significant number of concerns in a manner that would meet the following network requirements...*

See AT&T - BellSouth AIN Test Report (BellSouth Individual Report), attached as Exhibit 1 to Pre-filed Direct Testimony of J. Hamman.

Mr. Hamman also suggests that post dialing delay (that is, the time between the completion of dialing and proper disposition of the call (ringing tone, announcement, busy tone, etc.) is an additional factor in requiring un-mediated access. Unfortunately Mr. Hamman did not note that AT&T and BellSouth differ significantly in their projections of the amount of additional post dialing delay introduced by mediation devices and further, whether such post dialing delay is even discernible to the customer making the call. At the hearing, Mr. Hamman testified that, in his opinion, a post-dialing delay of 8/10 of a second was perceptible to customers. See Hearing Transcript, Vol. 1, at p. 137, ll. 19-21. BellSouth submits that 8/10 of a second is not perceptible, and a small price to pay for network reliability.

The second form of mediation that BellSouth believes is appropriate is intended to protect the contents of BellSouth's call related databases. If third parties are allowed direct access to those databases, BellSouth believes disruption is possible from third parties who wish to either update the contents of those databases or to create new service logic stored in those databases that would instruct BellSouth switches how to process and route certain calls.

ANALYSIS AND FINDINGS:

BellSouth has already agreed to give AT&T access to its AIN capabilities. The question presented in this issue is whether access to these capabilities will be "mediated." AT&T's concern with mediation is two-fold. First, the introduction of mediation into the network is an additional point of potential system failure and, secondly, that mediation would add a post-dialing delay of between 1/10 and 8/10 seconds (the BellSouth and AT&T witnesses differed on the actual amount of post-dial delay). This question was the subject of a great amount of discussion in the FCC Order, at §V(J)(4), which provides in pertinent part:

> Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuse of the incumbent's AIN facilities. (Emphasis added). *Id.*, at ¶488.

In short, AT&T's request for unmediated access to the AIN is inappropriate, and the appropriate question for this arbitration proceeding is simply whether mediation mechanisms are available and whether they will adequately protect against intentional or unintentional misuse of BellSouth's AIN facilities. The record in this matter establishes that mediation protocols are currently technically feasible, and BellSouth has stated for the record that it deems such mediation sufficient to protect its facilities. AT&T's alternative assertion that should this Commission conclude that mediation is necessary BellSouth must also be required to route its traffic through such mediation is also rejected. Although the introduction of mediation admittedly introduces a post-dialing delay, AT&T's position

that the Act's requirement of "parity" mandates that all parties have comparable delays is unsupportable. The Act, at §251(a)(3), describes dialing parity as access with "no *unreasonable* delays." As the FCC has already required mediation when technically feasible and resultant post-dialing delays must be deemed "reasonable" and therefore at parity. Accordingly, BellSouth is ordered to provide AT&T with access to its AIN facilities, but only subject to mediation.

14(C) **Local Switching:**

AT&T's Position: *BellSouth refuses to unbundle Local Switching that includes all the features, functions, and capabilities inherent in BellSouth's switches, but does not include the separate and distinct network elements of operator systems and inter-office transport. BellSouth's second "justification" for refusing to provide Local Switching as requested by AT&T is that customized routing is not technically feasible. Also, BellSouth claims it cannot unbundle Operator Systems, Tandem Switching, Dedicated and Common Transport based upon its argument that customized routing is not technically feasible.*

BellSouth's Position: *AT&T has requested that the local switching capability and operator systems be made available as unbundled network elements and as separate elements of total service resale. What these parties define as "local switching" and "operator systems" are more appropriately referred to as "selective routing" or "customized routing." Essentially, AT&T wants BellSouth to provide selective routing arrangements that will enable an end-user (for which a CLEC acquires service from BellSouth at wholesale and resells at retail) to reach a CLEC's operators just as a BellSouth customer reaches a BellSouth operator or repair service center today when dialing 0, 411 or 611. AT&T has defined two other unbundled network elements (dedicated transport and common transport) as requiring the selective routing capability.*

BellSouth will resell its retail services and offer all capabilities (operator and directory services, dedicated transport and common transport) on an unbundled basis; however, when a CLEC resells BellSouth's services or otherwise utilizes BellSouth's local switching it is not technically feasible to selectively route calls to CLEC operator service or repair service platforms on a non-discriminatory basis to all CLECs who may desire this feature.

ANALYSIS AND FINDINGS:

As in issues 6 and 7, supra, resolution of this issue hinges on whether "selective routing" is technically feasible. The Commission would simply adopt and reaver the resolution of this question as presented in analysis of Issue 6- that selective routing is not technically feasible- and deny AT&T's request that local switching capability and operator systems be made available as unbundled network elements

ISSUE 15: Limitations on Combining Unbundled Network Elements

AT&T Position: *BellSouth may not place any restrictions on AT&T's ability to combine unbundled network elements with one another, with resold services, or with AT&T's or a third party's facilities. The Act expressly requires BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. § 251(c)(3). The FCC specifically found that a new entrant may combine unbundled network elements in any manner it chooses. 47 C.F.R. §§ 51.309(a) and 51.315(c): FCC Order No. 96-325 ¶¶ 292, 296. Notwithstanding these clear legal requirements, BellSouth refuses to provide AT&T with the unbundled Loop Facility and unbundled Local Switching if AT&T plans to combine them and offer service to consumers using these elements. Instead, BellSouth maintains that AT&T's only "choice" is to buy BellSouth's existing port*

offering at a wholesale price and then resell it to AT&T's customers. AT&T contends BellSouth must provide access to the unbundled network elements which AT&T has requested. Unbundling refers to the offering of discrete elements of the incumbent LEC's network as generic functionalities rather than as retail services. Once a network element has been unbundled from the local exchange network, it can be combined with other elements in such a way as to provide service offerings. The network elements must be unbundled so that AT&T can combine these ingredients to create for consumers the widest variety of service options, including services not available from BellSouth.

Each of the elements requested meet the definition of a network element as "a facility or equipment used in the provision of a telecommunications service" including the "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C.A. § 153(29) AT&T believes the Act requires that BellSouth provide access to network elements at any technically feasible point. 47 U.S.C.A. § 251(c)(3). Technical feasibility under the Act refers solely to technical or operational concerns and not economic, space or site considerations. 47 C.F.R. § 51.5; FCC Order No. 96-325 ¶ 198. Provision of all of the elements requested is technically feasible.

The ability to combine the unbundled Local Loop and unbundled Local Switching allows new entrants to create a "platform configuration," whereby the new entrant combines an unbundled switch and an unbundled loop to form a basic exchange platform for local exchange services. The new entrant can then market this basic platform, or combine it with its own network elements, such as Operator and Directory Assistance services. The use of the platform by a new entrant allows for

lower prices and ease of shifting between providers; does not require reconfiguration for a change in providers; and solves the problem of local number portability. New entrants will not choose to purchase unbundled elements to recreate a service available for resale simply to avoid paying wholesale rates. Re-creation and marketing of services using unbundled network elements requires skills and expertise that many new entrants do not possess and involves increased risks over purchasing services for resale.

BellSouth's Position: *For purposes of this proceeding, BellSouth does not ask the Commission to rule on the issue of whether AT&T can recombine network elements to recreate BellSouth's existing services. That is an issue before the Eighth Circuit Court of Appeals. BellSouth requests the Commission to address the appropriate pricing for such recombinations. BellSouth respectfully requests this Commission to conclude that under the Act, when a new entrant such as AT&T simply purchases and combines underlying unbundled network elements to create a service substantially identical to that which BellSouth is already offering at retail (especially in the case of unbundled local loop and unbundled local switching), the parties should treat that transaction for what it is, the resale of a service, rather than the combination of unbundled elements, and for pricing purposes, the new entrants should pay the discounted wholesale rate applicable to resold services.*

AT&T's interpretation of the Act will give AT&T (1) the ability to resell BellSouth's retail services, but avoid the Act's pricing standard for resale; (2) the ability for AT&T to avoid the joint marketing restriction specified in the Act, as well as any use and user restrictions contained in BellSouth's tariffs' (3) the ability to argue for the retention of access charges by AT&T even though the actual arrangement is "disguised resale"; (4) the ability to maximize its market position by

gaming the system and targeting the most profitable form of resale to particular customers (i.e., resale in rural areas, and rebundled services in urban areas); and, (5) the ability to foreclose, to a large extent, facilities-based competition and competitors. Moreover, AT&T would be able to do all of this without investing the first dollar in new facilities or new capabilities.

ANALYSIS AND FINDINGS:

AT&T requested that this Commission impose no restrictions on AT&T's ability to combine BellSouth's network elements in AT&T's providing of local service. The FCC rules clearly provide that an ILEC shall provide network elements in a manner that allows requesting CLEC's to combine such network elements in order to provide a telecommunications service In addition, the FCC rules provide that upon request an ILEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the CLEC in any technically feasible manner

However, the federal Act establishes separate and distinct pricing methodologies for resold services and for unbundled network elements. Specifically, the Act mandates that wholesale rates shall be determined on the basis of retail rates charged to subscribers, excluding the costs avoided by the local exchange carrier (§252(d)(3)). Each ILEC has the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers (§252(d)(4)) However, with respect to interconnection and network elements, the Act specifies that the charges shall be based on cost and may include a reasonable profit (§252(d)(1)(A)). Further, the Act places a restriction on the ability of certain telecommunications carriers to jointly market resold services with interLATA services (§271(e)(1)).

Clearly, all relevant portions of the Act and the FCC Order provide that AT&T may purchase unbundled elements from BellSouth and rebundle those elements in any manner that is technically

feasible. This fact is undisputed by either party. The real issue presented is not whether AT&T may purchase and rebundle elements in any manner they choose, but the rate of compensation for the purchase of such 'elements.'

To the extent AT&T purchases unbundled network elements and then recombines them to replicate BellSouth services, it is reselling BellSouth's services. As Shakespeare pointed out, a rose by any other name is still a rose, and so it is with resale, even when AT&T chooses to call it a combination of unbundled elements. Both the FCC and this Commission have issued Orders strongly supporting an aggressive resale market. This commitment to resale would be rendered meaningless if AT&T were allowed bypass resale through the fiction of "rebundling." Unrestricted pricing on the recombination of unbundled elements would allow AT&T to purchase unbundled elements from BellSouth and then rebundle those elements without adding any additional capability, in order to create a service which is identical to a retail offering already being provided by BellSouth and therefore subject to mandatory resale. Such an arrangement would allow AT&T to avoid both the Act's and this Commission's pricing standards for resale, avoid the Act's restrictions regarding joint marketing and avoid access charge requirements. Such an arrangement would also serve as a disincentive to the ILECs to construct their own facilities.

Accordingly, AT&T may combine unbundled network elements in any manner they choose; however, when AT&T recombines unbundled elements to create services identical to BellSouth's retail offerings, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount established in Order U-22020 or any subsequent modifications thereof (the current resale discount rate is 20.7%) and offered under the same terms

and condition as BellSouth offers the service under.[5] AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contain the functions, features and attributes of a retail offering that is the subject of properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive functionality or capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing 'services identical to a BellSouth retail offering.'

ISSUE 16: Access to Rights-of-Way, Poles, Ducts, and Conduits

AT&T's Position: *BellSouth must provide AT&T access to rights-of-way, conduit, pole attachments, and any other pathways on terms and conditions at parity to that provided by BellSouth to itself or any other party. BellSouth has backed off of its original demand for reservation of capacity up to five years in advance, but has offered no alternative demand. It has indicated that it would not grant even one year of reserved space to AT&T.*

AT&T's position is that BellSouth should not be permitted to reserve for itself capacity in a given facility unless other carriers are permitted to reserve capacity for an equal number of years because the Act requires BellSouth to provide nondiscriminatory access to other providers. 47 U.S.C.A. § 251(c)(2) and (6). The FCC Order also explicitly prohibits BellSouth from reserving right-of-way capacity for its future needs at the expense of the needs of new entrants. FCC Order

[5]See discussion at Issue 2, supra.

No. 96-325 ¶ 1170. "Nondiscriminatory" means that BellSouth must provide to others the same access it provides to itself.

BellSouth's Position: *BellSouth agrees to provide AT&T equal and non-discriminatory access to poles, duct, conduit (excluding maintenance spares), entrance facilities, and rights of way under its control, which are not currently in use and not required by BellSouth as a maintenance spare. The equal and non-discriminatory access shall be on terms and conditions equal to that provided by BellSouth to itself or to any other party, except that BellSouth should not be required to give access to its maintenance spares. BellSouth's reservation of maintenance spares is a standard telecommunications industry practice. A maintenance spare is simply a place reserved on the pole or in the conduit in which BellSouth can place facilities quickly in response to emergency situations such as cut or destroyed cables. Extensive delays in service restoration will be experienced if BellSouth's maintenance spare is forfeited.*

BellSouth's original position sought to reserve conduit and pole capacity required by BellSouth's five-year forecast. However, the FCC Order apparently concluded that an incumbent LEC may not reserve space in its conduit or on its poles for its own use different from what it would allow a CLEC to reserve. If the FCC Order on this issue withstands appeal, BellSouth will face the conundrum of either allocating conduit and pole space on a first come, first served basis or allowing parties to reserve capacity no matter the timeframe. BellSouth cannot efficiently and effectively provide service under either scenario for the reasons stated by Mr. Milner. Nevertheless, in an effort to resolve this issue, BellSouth proposes that no space be reserved by any party and that available space be allocated on a "first come, first serve" basis. BellSouth does request that its emergency spares, which are used during emergency restoration activities, be

excluded from allocation. Further, terms and conditions of such access shall not include the mandatory conveyance of BellSouth's interest in real property involving third parties.

ANALYSIS AND FINDINGS:

This issue is readily resolved through reference to the Act, which requires unbundled access to rights-of-way, and previous Orders of this Commission. Pole attachments are addressed in this Commission's General Order dated December 17, 1984. This Order was recently reaffirmed in the General Order dated March 15, 1996. This latter Order, entitled "Regulations for Competition in the Local Telecommunications Market," provides at §1101(K) that Telecommunications Service Providers shall allow nondiscriminatory access to their conduits and rights-of-way by other Telecommunications Service Providers for the provisioning of local telecommunications services."

Allowance of reservation of pole/conduit/right-of-way capacity- finite resources- will inevitably lead to strategic posturing by parties and would appear to be at direct odds with this Commission and the Acts requirement of non-discriminatory access. The sole exception to this would be the "maintenance space" noted by BellSouth, which is found to be a technical necessity.

Although BellSouth may reserve unto itself a "maintenance spare," all other pole capacity shall be allocated on a first come/first serve basis.

ISSUE 17: *This issue was resolved by the parties prior to arbitration*

ISSUE 18: *This issue was resolved by the parties prior to arbitration*

ISSUE 19: Access to Unused Transmission Media

AT&T's Position: *BellSouth must lease to AT&T its unused transmission media also known as "dark fiber." AT&T believes that dark fiber meets the Act's definition of a network element. 47 U.S.C.A. § 153(29). The fact that it is not currently in use does change its nature. AT&T will*

deploy SONET rings in certain market areas to create competitive facilities. Building these rings will require the placement of many miles of fiber, with the attendant difficulties of obtaining rights-of-way, conduit and pole, and building permits. Access to BellSouth's dark fiber will permit AT&T to develop its own network facilities more quickly because it can put to good use an existing but unutilized element in BellSouth's network and will not need to lay its own fiber and obtain rights-of-way, conduit, poles and building permits.

BellSouth's Position: *The "dark fiber" to which AT&T seeks access is, by definition, unused by BellSouth, and does not form part of BellSouth's functioning network. Accordingly, it should not be considered a "network element" subject to unbundling under the Act.*

ANALYSIS AND FINDINGS:

Section 251(c)(3) of the Act imposes a duty on incumbent LECs to "provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis." The Act, at §153(a)(45) defines 'network element' as "a facility or equipment used in the provision of a telecommunications service." As noted by BellSouth, unused transmission media is by definition not used, and therefore it is not a "network element." BellSouth's unused transmission media is therefore not subject to mandatory unbundling under the Act

ISSUE 20: *This issue was resolved by the parties prior to arbitration*

ISSUE 21: Provision of Copies of Records Regarding Rights-of-Way

AT&T's Position: *BellSouth must provide AT&T with copies of pole and conduit engineering records. The FCC Order indicates an expectation that BellSouth will make its maps, plats and other relevant data available for inspection and copying when BellSouth receives a*

legitimate request for access to its facilities or property. FCC Order 96-325 ¶ 1223: Copies of these records are required to facilitate AT&T's planning of access to facilities which in turn is necessary to provide service to Louisiana consumers. AT&T agrees that appropriate conditions can be imposed to protect proprietary data.

BellSouth's Position: *BellSouth's engineering records for rights of way are extremely proprietary. BellSouth has agreed to provide AT&T with structure occupancy information regarding conduits, poles, and other right-of-way requested by them within a reasonable time frame. BellSouth will allow designated CLEC personnel, or agents acting on behalf of a CLEC, to examine engineering records or drawings pertaining to such requests that BellSouth determines would be reasonably necessary to complete the job. In negotiations, AT&T has said it has been satisfied with BellSouth's coordination and cooperation on structure access situations. Additionally, in negotiations AT&T said that it would not be willing to give BellSouth copies of its plats in a reverse situation. Plats and detailed engineering records are considered proprietary information and the FCC Order accords BellSouth reasonable protection of its proprietary information contained in records provided to AT&T.*

ANALYSIS AND FINDINGS:

As was noted in discussion of Issue 16, supra, this Commission already has rules and regulations in place requiring non-discriminatory access to rights-of-ways. This requirement would be meaningless without access to the requested records. Nevertheless, BellSouth is correct in its assertion that many of these records might contain confidential or proprietary information. BellSouth shall make the requested records available, subject to the execution of a mutually acceptable confidentiality agreement

ISSUE 22: *This issue was withdrawn from arbitration by AT&T*

ISSUE 23: *This issue was withdrawn from arbitration by AT&T*

ISSUE 24: **What is the appropriate price for each unbundled network element that AT&T has requested?**

AT&T's Position: *AT&T proposes that the Commission set unbundled network element prices at the costs generated by AT&T's proposed Hatfield Model rates. Each of the prices recommended by AT&T represent BellSouth's TELRIC, plus a reasonable share of joint and common costs. AT&T further contends that the Commission should adopt the AT&T proposed operator systems prices based on BellSouth cost data until BellSouth produces cost data sufficient to permit a more detailed analysis.*

BellSouth's Position: *BellSouth recommends as rates for unbundled network elements the BellSouth's existing tariffed rates for services that are comparable to the unbundled network elements, where they exist, because those existing tariff rates are based upon BellSouth's costs, have been approved by this Commission, include a reasonable profit, and, therefore, meet the requirements of § 252 of the Act. For unbundled network elements where there are no existing tariff rates, BellSouth proposed market-based rates that are subject to a true-up process within the next six months. BellSouth's proposed rates are set forth in Scheye Exhibit RCS-2. BellSouth and ACSI used this approach in its recently negotiated settlement, in which the parties agreed on rates for the elements that ACSI needed to get into business, and made the agreed-upon market rates subject to a true-up process after the relevant regulatory bodies determined final prices through a generic cost proceeding. As long as the prices here are set on a reasonable basis (which does not mean the FCC proxy rates or rates derived from the Hatfield Model) and as long as there is a true-up provision*

that requires the resolution of final prices within the next six months, BellSouth is agreeable to using such a process in this docket. As Mr. Scheye testified, such a process will allow the parties some "breathing room" to allow the appeal of the FCC Order to proceed and, importantly, allows competitors into the local market as quickly as possible.

BellSouth further believes that AT&T's proposal for deaveraging rates should be rejected. As an initial point, that portion of the FCC's pricing rules requiring geographic deaveraging has been stayed by the Court. Consequently, BellSouth believes that the Commission should not require any such geographical deaveraging.

Historically, it has been the intent and practice of regulators, including this Commission, to maintain a statewide average for basic service rates. Such pricing practices served both regulatory and political purposes and incorporated subsidies to ensure affordable local service for all customers, both urban and rural customers. The intent of the FCC in its recent Order, as we understand it, is to change the current subsidy model to a "cost" model. BellSouth believes such pricing will have very serious implications for basic local exchange service. The present rate structure in Louisiana incorporates long standing policies of purposefully pricing some services markedly above costs in order to price other services at or below cost such that all Louisiana customers would have access to reasonable and affordable basic local exchange service. Further, basic local exchange rates have been established according to the number of lines in an exchange's local calling area -- the greater the number of lines in an exchange's local calling area -- the greater the number of lines in an exchange's local calling area, the higher the price. Deaveraging loop prices based solely on costs, without concomitant action on re-balancing rates, will produce a completely different result than the way such rates have been set in the past. In addition,

unbundled loop pricing establishes a single rate to be used either for business or residence customers. By contrast, BellSouth's basic local exchange business service is priced well above basic residential service as an intended subsidy to keep residential rates affordable.

It is very important to recognize that unbundled loops will be used to compete with residence and business local exchange services. As such, the pricing implications of deaveraging the loop cannot be divorced from the price of local exchange services. While BellSouth believes that rate re-balancing and economic pricing must be considered in another proceeding, the Commission must consider the implications of deaveraging unbundled loops on the current pricing of retail local exchange service.

ANALYSIS AND FINDINGS:

This issue accounted for perhaps the single largest segment of the pre-filed testimony and a great deal of trial time was also devoted to this issue. As all parties agree, the Act requires cost-based pricing of all unbundled network elements. Not surprisingly, there is a great deal of disagreement as to what these costs actually are

AT&T based its cost analysis on the Hatfield Model, a computer generated model. The Hatfield Model does not pretend to actually determine what the costs of unbundled network elements are, rather it attempts to extrapolate costs using certain assumptions applied to census data. Essentially, the Hatfield Model takes data from a designated Census Block Group and then allocates costs to serve that Census Block Group based on the assumption that the CBG is perfectly square and that the population within the CBG is evenly distributed. Unfortunately, the Census Bureau did not lay-out its CBGs in such a fashion, and they in actuality are irregularly shaped geographical areas with constantly changing population density patterns. Restated, the Hatfield Model is a purely

hypothetical approximation of what costs should be, based upon certain assumed programing parameters In one telling cross-examination, an AT&T witness was forced to admit that the Hatfield Model could assume under-deployment of cable to serve fixed areas. Simply put, the Hatfield Model does not- and cannot- determine actual costs. Rather, it merely calculates hypothetical cost structures, and therefore can be of little use in these proceedings.

In contrast, BellSouth sought to support its position on costs through the use of a TELRIC cost study. Such a study is precisely the type of tool this Commission has used for many years to determine actual costs. As such a study relies on actual cost analysis, rather than hypothetical modeling, it *should* produce a result more acceptable under the Act. Unfortunately, AT&T raised substantial questions regarding the accuracy of BellSouth's cost study, pointing to questionable depreciations and, most importantly, the lack of verifiability of many of the entries in the report.

In this proceeding, both parties convinced the arbitrator that the other parties cost proposals were seriously flawed, with the result that the credibility and viability of both AT&T's Hatfield Model and BellSouth's cost-study were so impugned that neither of the parties' cost proposals can be accepted in the present proceedings

Fortunately, the Commission is presently conducting its own cost study of these same elements, in Docket U-22022[6]. The Commission will await conclusion of Docket U-22022 before establishing permanent cost-based rates in this matter. In the interim, those rates submitted on

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[6]The referenced proceeding is captioned: *Louisiana Public Service Commission, Ex Parte, In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable Non-Discriminatory, Cost Based Tariffed Rates.*

attached Appendix A[7] shall be put in place, subject to true-up upon the establishment of final rates based upon the findings of the final order in Docket U-22022[8] (or any other appropriate Commission proceeding). At such time as a final order issues in Docket U-22022 rates will be re-calibrated accordingly. To the extent that AT&T has actually purchased unbundled services from BellSouth prior to that time[9], the parties will reimburse each other for the difference between the interim rates and those rates established in Docket U-22022.

ISSUES 25/26: Call Transport and Termination/"Bill and Keep" Versus the Terminating Carrier Charging TSLRIC

AT&T's Position: *Call transport and termination should be set at economic costs. In the absence of adequate TELRIC cost studies from BellSouth, the Commission should implement an interim bill-and-keep arrangement. Bill-and-keep arrangements compensate a carrier terminating a call originated with another carrier by requiring the carrier originating the call to, in turn, transfer and terminate calls originating from the other carrier. Under a bill-and-keep arrangement, no money changes hands. The Act expressly permits this result. 47 U.S.C.A. § 252(d)(2)(B).*

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[7]These rates are drawn from the prefiled testimony of Kimberly Dismukes, the Commission's consultant in Docket U-22022. Although that matter is still proceeding, the rationale and rates set forth in Ms. Dismukes' testimony appear to be well reasoned and amply supported by the evidence.

[8]The establishment of permanent rates based upon any pending Commission action is, obviously, subject to subsequent modification, specifically including, but not limited to, the potential for modification by the presently pending ruling of the Eight Circuit Court of Appeals in *Iowa Utilities Board v FCC*.

[9]Final resolution of Docket U-22022 is anticipated within the next three-four months. It is doubtful that the interim rates will ever actually be utilized.

BellSouth's Position: *The rate for the transport and termination of traffic should be mutual and reciprocal and should be based on the tariffed rate for intrastate switched access rate minus the carrier common line ("CCL") charge and the residual interconnection charge ("RIC"). BellSouth has negotiated numerous interconnection agreements with transport and termination rates based on this formula. Alternatively, the rate for transport and termination of traffic should be set at a level sufficient to cover BellSouth's costs for providing transport and termination of traffic plus additional amounts to recover an appropriate allocation of joint and common costs, and a reasonable profit. Under no circumstances is it appropriate for this Commission to mandate a bill-and-keep arrangement.*

BellSouth's average local interconnection rate of $0.01 per minute meets that standard in that it allows for the recovery of BellSouth's costs and is reasonable. The reasonableness of BellSouth's rate is further demonstrated by the agreements that BellSouth has reached with other facilities-based carriers. Companies such as Time Warner, Intermedia Communications Inc., and others have found BellSouth's rates to be reasonable, allowing them a fair opportunity to compete for local exchange customers. If the rates these companies agreed to were not reasonable, they would not have signed an agreement, but would have filed for arbitration of the local interconnection rate.

ANALYSIS AND FINDINGS:

The Act provides that charges for transport and termination shall be mutual and reciprocal and provide for the recovery of each carrier's cost *See* §252(b)(2)(A). As was noted in the previous matter, this Commission has already established a generic docket (U-22022) in which it is reviewing BellSouth's cost studies and other relevant cost information and methodologies. This proceeding will

result in the setting of permanent rates for interconnection, is anticipated to conclude within the next 3-4 months In the meantime, the parties shall utilize the "bill-and-keep" methodology, solely as an interim measure, until a final Order issues establishing permanent rates.

ISSUE 27: What is the Appropriate Price for Certain Support Elements Relating to Interconnection and Network Elements?

AT&T's Position: *Prices for access to poles, conduits, ducts, rights of way and other support elements should be at economic cost. BellSouth has not provided sufficient cost information to permit appropriate pricing of these elements. The Commission should require BellSouth to produce adequate cost documentation for these capabilities.*

BellSouth's Position: *BellSouth generally proposes that, to the extent BellSouth already offers the support function or service to other customers through tariff or contract, the tariffed or contract price should be used. Many support or ancillary functions are currently provided to interexchange carriers. These prices have been approved, and there is no need to create a different pricing structure or level for CLECs. To the extent a new support function is required for use by a CLEC, the price should be set based on cost plus a reasonable profit, as specified by the Act.*

With respect to rates for access to poles, conduits and rights-of-way, BellSouth provides access to poles, conduits and rights-of-way under standard licensing agreements. These same agreements should be used for CLECs. To do otherwise would be unreasonable and discriminatory to existing customers using these support facilities.

ANALYSIS AND FINDINGS:

Review of the Briefs filed in this matter leads to some confusion, as AT&T chose only to address pricing of poles, conduits and rights-of-way in both its pre- and post-trial briefs, while BellSouth also addressed pricing for collocation and number portability. As AT&T is the party plaintiff in these proceedings, its delineation of this issue is controlling, and the only issues properly subject to arbitration are the prices for poles, conduits and rights-of-way[10]. As to poles, ducts, conduits and rights-of-way, §251(b)(4) imposes on BellSouth the duty to afford access to these items at "rates that are consistent with section 224." This Section (47 U.S.C. §224) expressly provides that 'pole attachments' are subject to State regulation, and goes on to provide that the FCC shall, within two years of enactment of the Act, prescribe regulations to govern the charges for pole attachments which will become effective five years after adoption of the Act, in 2001. *See* 47 U.S.C. §224(e)(1) and (4). Until the referenced FCC rules become effective in 2001, there is no basis for granting AT&T's request for cost-based pole attachments. Consistent with this Commission's prior treatment of such access- as permitted by §224(c)- BellSouth shall continue to provide access to poles, conduits and rights-of-way under standard licensing agreements, so long as they comply with all pertinent rules and regulations of this Commission.

ISSUE 28. Must BellSouth Price both Local and Long Distance Access at Cost?

AT&T's Position: *Charges for call transport and termination should be non-discriminatory -- whether for "local" or "toll"/long distance. Because such access is a network element, the Act*

[10]Precise delineation of the issues was the topic of much discussion at hearing, and at its conclusion the parties were directed to concisely re-state their positions on each of the issues. Furthermore, AT&T was specifically advised that it bore responsibility for framing the issue that would be controlling in final resolution of this proceeding.

requires TELRIC based pricing. 47 U.S.C.A. §§ 251, 252. These charges should be based on an economic cost-based pricing system which does not discriminate between types of calls or carriers. To add access or other surcharges would allow BellSouth to recover more than its costs, impair competition and restrict calling area product differentiation to the detriment of Louisiana consumers.

BellSouth's Position: *This issue is outside of the scope of this arbitration because exchange access is not defined as local interconnection under the Act. The pricing rules in §251 and §252 regulate the prices of local interconnection and unbundled network elements used for local service only. Congress intended the pricing and other rules §251 and §252 to open local telecommunications markets to competition. Those sections were clearly structured to create the framework for interconnection of local networks and access to network elements in order to create local competition. There is nothing in the Act or its legislative history that would suggest that these rules were intended to cause a drastic change in the current exchange access charge structure. Since there is no indication from Congress that it intended to affect exchange access charges, §251 and §252 apply to local interconnection and the use of the unbundled network elements to provide local telecommunications services only.*

In its Interconnection Order dated August 8, 1996, the FCC agreed that §§ 251 and 252 do not apply to the price of exchange access and that a telecommunications carrier seeking interconnection only for interexchange service does not fall within the scope of §251(c)(2). See August 8, 1996 Interconnection Order, at ¶ 191. Additionally, it is widely recognized that existing rates for exchange access provide implicit subsidies that have allowed BellSouth and other ILECs to provide other services, for example, basic residential service in rural areas, at rates below the